



**Mwanzia v Republic (Miscellaneous Criminal Application  
E008 of 2022) [2023] KEHC 2580 (KLR) (29 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2580 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION E008 OF 2022**

**JN ONYIEGO, J**

**MARCH 29, 2023**

**IN THE MATTER OF AN INTENDED APPEAL**

**BETWEEN**

**STEPHEN KATA MWANZIA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was originally charged with the offence of robbery with violence contrary to section 296 (2) of the *Penal code* before Mwingi Law Courts. Upon returning a plea of not guilty, the matter proceeded to full trial. He was eventually convicted and sentenced to death.
2. He later appealed to the High court under High Court Criminal appeal number 91 of 2012 where the lower court decision was upheld  
He later appealed to the Court of Appeal vide Cr Appeal Number 61/2012 which reduced the sentence to 20 years imprisonment.
3. He has now moved this court vide Chamber summons filed on 5-4-2022 seeking review of the sentence by factoring the period spent in remand custody.
4. The State /Respondent have opposed the application on grounds that the Court is *functus officio* and that the application is incompetent.
5. I have considered the application herein and the response thereof. It is trite law that this court is duty bound to consider the period spent in remand custody before rendering sentence pursuant to Section 333 (2) of the *Criminal Procedure Code*.
6. In the instant case, the case has gone up to the court of appeal where sentence was reduced from death penalty to 20 years imprisonment.



This court is *functus officio* and cannot review court of appeal's sentence.

Accordingly, it is my finding that the application is not merited and the same is dismissed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS...29<sup>TH</sup> ..... DAY OF MARCH, 2023.**

**J. N. ONYIEGO**

**JUDGE**

**In the Presence of:**

Appellant

Mr. Kihara for the state.

Martin/ Mohamed- Court Assistants.

**J. N. ONYIEGO**

**JUDGE**

